

Message Text

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ACTION EA-09

INFO OCT-01 ISO-00 OMB-01 CIAE-00 PM-04 H-02 INR-07 L-03

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CCO-00 A-01 AID-05 /088 W
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INFO SECDEF WASHDC

JCS WASHDC

CINCPAC

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CG 13TH AF CLARK

C O N F I D E N T I A L SECTION 1 OF 2 MANILA 10354

CINCPAC ALSO FOR POLAD

FROM USDEL 122

E.O. 11652: GDS

TAGS: MARR, RP

SUBJECT: PHILIPPINE BASE NEGOTIATIONS: LABOR

1. SUMMARY: PROPOSES FULL TEXT FOR US DRAFT ARTICLE ON
LABOR, WHICH RETAINS 1968 BLA BUT MODIFIES CERTAIN POINTS
THEREIN TO ACCOMMODATE BOTH PHIL AND US CONSIDERATIONS.
ALSO PROVIDES USDEL COMMENTS ON PARAGRAPHS NOT PREVIOUSLY
SUBMITTED TO YOU. END SUMMARY.

2. COMPLETE STRUCTURE OF PROPOSED US DRAFT ARTICLE ON
LABOR FOLLOWS. COMMENTS ARE INCLUDED ON ONLY THOSE
PARAGRAPHS WHICH ARE NOT INCLUDED AND COMMENTED ON IN
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USDEL 108. QUOTE. ARTICLE-----, LABOR.

1. WITH A VIEW TOWARDS CONTINUING FAVORABLE EMPLOYER-EMPLOYEE RELATIONS IN THE U.S. FACILITIES; TO PROVIDE FOR THE APPLICATION OF RELEVANT LABOR STANDARDS ESTABLISHED BY PHILIPPINE LAWS, RULES AND REGULATIONS; AND TO ENSURE THE ORDERLY ADMINISTRATION AND EFFECTIVE OPERATION OF THESE FACILITIES, THE PROVISIONS OF THE BASE LABOR AGREEMENT OF 1968 AND THE AGREED MINUTES THERETO, AS MODIFIED BY THE FOLLOWING PROVISIONS OF THIS ARTICLE, SHALL GOVERN AND REGULATE THE EMPLOYMENT OF PHILIPPINE CITIZENS WHO ARE DIRECT HIRE EMPLOYEES OF THE U.S. ARMED FORCES IN THE PHILIPPINES. END QUOTE.

COMMENTS ON INTRODUCTOR PARAGRAPH. THIS PROPOSED TEXT ELIMINATES REFERENCE IN THE TABLED ARTICLE (APPROVED BY STATE 155032) TO THE PHIL BASE COMMANDER, CONTINUES THE 1968 BLA AS THE BASIS FOR LABOR MATTERS WITHIN THE FACILITIES, AND PERMITS BLA MODIFICATION ONLY TO THE EXTENT THAT THE NEW AGREEMENT ITSELF MODIFIES THE BLA. REFERENCE TO THE PHIL BASE COMMANDER IN THIS UMBRELLA STATEMENT NO LONGER APPEARS TO BE AN ABSOLUTE PHIL DEMAND, SO LONG AS HIS ROLE IN LABOR PROBLEMS IS MEANINGFUL AND DEFINED SPECIFICALLY. YOU WILL FIND THAT TO BE THE CASE IN SEVERAL OF THE SUBORDINATE PARAGRAPHS. ALTHOUGH WE DO NOT EXPECT THIS WORKING OF THE GENERAL STATEMENT TO FIND READY ACCEPTANCE BY PHILS, WHO STILL HOLD STRONGLY TO POSITION THAT 1968 BLA IS AN ANACHRONISM, WE BELIEVE IT HAS A CHANCE, WITH MINOR CHANGES OF ULTIMATE ACCEPTANCE.

QUOTE: 2. PREFERENTIAL EMPLOYMENT. ALL CIVILIAN POSITIONS AT THE FACILITIES SHALL BE FILLED BY PHILIPPINE CITIZENS, EXCEPT THOSE THAT HAVE HISTORICALLY AND CONTINUOUSLY BEEN FILLED BY U.S. CIVILIAN EMPLOYEES OR WHICH ARE FILLED BY U.S. CIVILIANS AT THE TIME THIS AGREEMENT IS SIGNED. NEW POSITIONS MAY BE CREATED FOR U.S. CIVILIAN EMPLOYEES ONLY IN CASES WHERE THESE ARE SPECIAL MANAGEMENT NEEDS NOR FOR SECURITY POSITIONS WHICH MAY BE FILLED ONLY BY CITIZENS OF THE UNITED STATES. THE PHILIPPINE BASE COMMANDER WILL BE GIVEN WRITTEN NOTICE PRIOR TO THE FILLING OF ANY SUCH NEWLY CREATED POSITION. IN THE EVENT THAT NO

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OBJECTION IS RECEIVED WITHIN FIVE WORKING DAYS, THE POSITION MAY BE FILLED. IN THE EVENT THAT THE PHILIPPINE BASE COMMANDER OBJECTS TO THE FILLING OF THE NEW POSITION WITH A U.S. CIVILIAN, CONSULTATIONS SHALL BE HELD BETWEEN THE PHILIPPINE BASE COMMANDER AND THE U.S. FACILITIES COMMANDER. IF THE QUESTION CANNOT BE RESOLVED, IT SHALL BE ELEVATED TO THE JOINT COMMITTEE FOR FINAL DETERMINATION. WHILE THE MATTER IS BEING ADJUDICATED THE POSITION MAY BE FILLED BY

A U.S. CITIZEN CIVILIAN TEMPORARY EMPLOYEE END QUOTE
(COMMENT CONTAINED IN USDEL 108.)

QUOTE. 3. RECRUITMENT. RECRUITMENT OF FILIPINO EMPLOYEES WHO ARE NOT FORMER EMPLOYEES, CHILDREN OF DECEASED EMPLOYEES OR IN OTHER SIMILAR SPECIAL CATEGORIES WILL BE ACCOMPLISHED FROM LISTS OF QUALIFIED APPLICANTS SUBMITTED BY THE EMPLOYMENT SERVICE OFFICES (ESO) OF THE PHILIPPINE DEPARTMENT OF LABOR IN RESPONSE TO RECRUITMENT REQUESTS FROM THE FACILITIES. VACANT POSITIONS WILL BE FILLED FIRST FROM WITHIN THE RANKS OF PRESENT OR FORMER FACILITY DIRECT HIRE EMPLOYEES OR SPECIAL CATEGORY CANDIDATES BEFORE ASSISTANCE IS SOUGHT FROM ESO. THE FACILITIES PERSONNEL OFFICER MAY DIRECT PERSONS TO THE ESO AND REQUEST THAT THEIR NAMES BE INCLUDED ON LISTS TO BE FURNISHED. SELECTION WILL BE MADE BY FACILITIES OFFICIALS. ADDITIONAL LISTS MAY BE REQUESTED FOR THE SAME JOB VACANCY IN THE EVENT SUFFICIENT QUALIFIED PERSONS ARE NOT CONSIDERED TO BE LISTED SO THAT A CHOICE IS AVAILABLE FROM SEVERAL BASICALLY QUALIFIED PERSONS. IF THE DEPARTMENT OF LABOR LEVIES A CHARGE FOR THESE SERVICES OF ITS ESO'S, SUCH CHARGES WILL BE WAIVED FOR THE U.S. FACILITIES. IN THE EVENT THE ESO DOES NOT FURNISH QUALIFIED CANDIDATES WITHIN A PERIOD OF ONE WEEK, U.S. FACILITIES MAY RECRUIT DIRECTLY. END QUOTE.

COMMENT ON "RECRUITMENT" PARAGRAPH. THIS MODIFIES THE LANGUAGE CONTAINED IN OUR EXPLORATORY TEXT IN PARA 3D, USDEL 108, TO EXEMPT U.S. FORCES ENTIRELY FROM PAYMENT OF ESO FEES.

QUOTE. 4. RESOLUTION OF DISPUTES. PRIOR TO REFERRAL OF EMPLOYEE CASE DISPUTES TO THE JOINT COMMITTEE UNDER THE CONFIDENTIAL

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PROVISIONS OF ARTICLE III OF THE BLA, CONSULTATIONS SHALL BE HELD BETWEEN THE PHILIPPINE BASE COMMANDER AND THE U.S. FACILITIES COMMANDER WITH A VIEW TOWARDS REACHING A FINAL DECISION IN THE MATTER WHICH WILL BE BINDING ON BOTH PARTIES. IF AGREEMENT IS NOT REACHED, THE TWO COMMANDERS WILL JOINTLY REFER THE CASE TO THE JOINT COMMITTEE FOR FINAL DECISION OR OTHER DISPOSITION. TO FACILITATE THE EXPEDITIOUS RESOLUTION OF CASES, THE JOINT COMMITTEE SHALL MEET PROMPTLY UPON THE REQUEST OF EITHER PARTY. END QUOTE.

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ACTION EA-09

INFO OCT-01 ISO-00 OMB-01 CIAE-00 PM-04 H-02 INR-07 L-03

NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15 USIA-06

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C O N F I D E N T I A L SECTION 2 OF 2 MANILA 10354

CINCPAC ALSO FOR POLAD

FROM USDEL 122

E.O. 11652: GDS

TAGS: MARR, RP

SUBJECT: PHILIPPINE BASE NEGOTIATIONS: LABOR

COMMENTS ON "RESOLUTION OF DISPUTES" PARAGRAPH. THIS PROPOSED TEXT SHOULD BE CONSIDERED IN TERMS OF TWO THINGS: FIRST, THE CURRENT BLA, PARA 1, ARTICLE III, PERMITS ANY PARTY TO RAISE ANY LABOR DISPUTE AT ANY TIME TO THE JOINT COMMITTEE; SECOND, THE PROPOSED TEXT IS INTENDED TO COUNTER PHIL DEMAND FOR BINDING ARBITRATION. ESSENTIAL POINTS IN OUR PROPOSED LANGUAGE ARE: (1) REFERRAL OF DISPUTES OVER WAGES AND FRINGES IS NOT CONTEMPLATED BECAUSE WE WOULD RETAIN THE AGREED MINUTES OF ARTICLE I, PARA 2; (2) INTRODUCTION OF
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A MEANINGFUL ROLE FOR PHIL BASE COMMANDER, ONE WHICH DOES NOT SUBMIT U.S. SIDE TO UNILATERAL PHIL DECISION, BUT ONE WHICH MAY VERY WELL PROVE TO BE AN EFFECTIVE MEANS OF RESOLVING SOME OF THE MORE MINOR OR MORE CAPRICIOUS EMPLOYEE UNION DEMANDS; (3) A FIRST-TIME PROVISION FOR IMPOSING JOINT COMMITTEE SOLUTIONS AGREED TO BY U.S. SIDE UPON THE DISPUTING PARTIES. HOPEFULLY, THIS WILL OBVIATE UNDERSECRETARY INCIONG'S OFT-REPEATED STATEMENT THAT THE JOINT COMMITTEE IS AN EMASCULATED BODY UNABLE TO IMPOSE ITS WILL ON ANYONE (WHICH HE SAYS IS THE REASON THE PHILS NO LONGER CALL MEETINGS OF THE JOINT COMMITTEE). SINCE WE RETAIN VETO AUTHORITY IN THESE PARTICULAR MATTERS, WE WOULD PREFER TO SEE THE COMMITTEE EMPOWERED WITH DECISION-MAKING AUTHORITY WHEN AGREEMENT CAN BE REACHED.

QUOTE. 5. PAYROLL DEDUCTIONS. THE U.S. FACILITIES COMMANDER SHALL EFFECT PAYROLL DEDUCTIONS REQUIRED BY PHILIPPINE LAWS, RULES AND REGULATIONS, AS LISTED BELOW AND SUCH OTHER DEDUCTIONS AS MAY BE AGREED UPON BY BOTH PARTIES. EXCEPT FOR UNION DUES AND AGENCY FEES WHICH SHALL BE REMITTED DIRECTLY TO THE RECOGNIZED COLLECTIVE BARGAINING ORGANIZATION, SUCH DEDUCTIONS WILL BE REMITTED TO THE APPROPRIATE PHILIPPINE GOVERNMENT AGENCY. THE PAYROLL ITEMS TO BE DEDUCTED ARE: INCOME TAX, SSS PREMIUMS, EMPLOYEES COMPENSATION PREMIUMS, MEDICARE PREMIUMS, EMPLOYEES COMPENSATION PREMIUMS, MEDICARE PREMIUMS, AND PAYMENTS FOR HOUSING, SALARY AND/OR EDUCATION LOANS, UNION DUES AND AGENCY FEES. DEDUCTIONS WHICH MAY HEREINAFTER BE REQUIRED BY PHILIPPINE LAW SHALL BE MADE UPON AGREEMENT OF THE PARTIES. END QUOTE. (COMMENT IN USDEL 108.)

QUOTE. 6. REDUCTION IN FORCE. NO INVOLUNTARY SEPARATIONS BY REDUCTION-IN-FORCE AFFECTING FILIPINO EMPLOYEES SHALL BE MADE WITHOUT PRIOR CONSULTATION WITH THE PHILIPPINE BASE COMMANDER WHO, TOGETHER WITH THE UNITED STATES FACILITIES COMMANDER, SHALL REVIEW THE MATTER WITH A VIEW TO EXPLORING ALTERNATIVES AND MITIGATING THE ADVERSE EFFECTS THEREOF. NO REDUCTION-IN-FORCE SHALL BE EFFECTED UNLESS THE PERSONNEL CONCERNED HAVE BEEN NOTIFIED AT LEAST 30 CALENDAR DAYS PRIOR TO THE DATE OF THEIR PROJECTED SEPARATION. END QUOTE

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COMMENT ON "REDUCTION-IN-FORCE" PARAGRAPH. THIS MODIFIES THE LANGUAGE CONTAINED IN OUR EXPLORATORY TEXT IN PARA 3B, USDEL 108, TO SPECIFY 30 CALENDAR DAYS NOTICE RATHER THAN 30 DAYS.

QUOTE. 7. ORGANIZATION FOR COLLECTIVE BARGAINING. COLLECTIVE BARGAINING ORGANIZATIONS RECOGNIZED UNDER ARTICLE II

OF THE BASE LABOR AGREEMENT WILL BE ORGANIZED AND WILL OPERATE IN COMPLIANCE WITH PHILIPPINE STANDARDS. SUCH ORGANIZATIONS RECOGNIZED AT THE TIME THIS AGREEMENT ENTERS INTO FORCE WILL BE PERMITTED ONE YEAR IN WHICH TO ATTAIN SUCH FULL COMPLIANCE. END QUOTE.

COMMENTS ON "ORGANIZATION FOR COLLECTIVE BARGAINING" PARA. THIS PROPOSAL IS USDEL GENERATED. IT IS INTENDED TO ENFORCE PARA 2 OF ARTICLE II, BLA. FILIPINO SUPERVISORY EMPLOYEES OF U.S. FORCES ARE PRESENTLY MEMBERS OF THE BARGAINING ORGANIZATION AND THIS HAS BEEN DETRIMENTAL TO US IN THAT IT CAUSES A CONFLICT AS TO WHETHER THEIR LOYALTIES LIE WITH MANAGEMENT OR THE UNION. RULE II, BOOK V OF THE PHILIPPINE LABOR CODE, WHICH SETS THE STANDARDS, OPERATES TO BAR "MANAGERIAL EMPLOYEES" FROM LABOR UNIONS. "MANAGERIAL EMPLOYEES" ARE DEFINED AS "ONE WHO IS VESTED WITH POWERS OR PREROGATIVES: (A) TO HIRE, TRANSFER, SUSPEND, LAY OFF, RECALL, DISCHARGE, ASSIGN OR DISCIPLINE EMPLOYEES; AND/OR (C) TO EFFECTIVELY RECOMMEND SUCH MANAGERIAL ACTIONS. ALL EMPLOYEES NOT FALLING WITHIN THIS DEFINITION ARE CONSIDERED RANK AND FILE EMPLOYEES FOR PURPOSES OF THIS CODE." SECTION 2, ARTICLE II OF CURRENT CBA CONTAINS "GRANDFATHER CLAUSE" WHICH ACKNOWLEDGES THIS SITUATION, BUT PERMITS IT TO BE PERPETUATED. TO BE CANDID, WE WOULD LIKE TO SEE THIS PROPOSAL IMPLEMENTED. WE DO NOT REALLY EXPECT PHIL PANEL ACCEPTANCE, BUT IT WILL SERVE AS A VIABLE BARGAINING POINT IN ANY EVENT.

QUOTE. 8. CONTRACTING OUT. IN THE EVENT THAT WORK CURRENTLY BEING PERFORMED BY DIRECT HIRE FILIPINO EMPLOYEES IS TO BE CONTRACTED OUT ON A CONTINUING BASIS, CONSULTATIONS SHALL BE HELD BETWEEN THE PHILIPPINE BASE COMMANDER AND THE U.S. FACILITIES COMMANDER WITH A VIEW TOWARDS MITIGATING ANY ADVERSE EFFECTS OF THE PROPOSED ACTION ON SUCH DIRECT HIRE

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EMPLOYEES. EVERY ATTEMPT WILL BE MADE TO PLACE AFFECTED EMPLOYEES IN OTHER JOBS WITHIN THE U.S. FACILITIES. THOSE EMPLOYEES WHO ARE TERMINATED WILL BE ENTITLED TO RECEIVE SEVERANCE PAY FOR WHICH THEY ARE ELIGIBLE, AND SHALL BE GIVEN PREFERENCE FOR REEMPLOYMENT WITHIN THE U.S. FACILITIES.

END QUOTE.

COMMENTS ON "CONTRACTING OUT" PARAGRAPH. PARA 6, ARTICLE I, AND PARA 1, ARTICLE IV, 1968 BLA, AS INTERPRETED IN AGREED MINUTES, ADDRESS THE MATTER OF CONTRACTING OUT. HOWEVER, PHIL SIDE CONTINUES TO EXHIBIT PROFOUND CONCERN WITH GETTING SOME SPECIFIC LANGUAGE INTO THE AGREEMENT PRECLUDING CONTRACTING OUT OF WORK BEING DONE BY DIRECT HIRE EMPLOYEES. OUR

POSITION IS THAT US FORCES MUST RETAIN THIS MANAGEMENT PREROGATIVE AND THE BLA IS SUFFICIENT. HOWEVER, WOULD LIKE WASHINGTON APPROVAL TO INCLUDE ABOVE PARAGRAPH SINCE WE SEE NO WAY TO AVOID DISCUSSION OF THE SITUATION WITH PHIL BASE COMMANDER ANYWAY, IF UNION BRINGS IT TO HIM.

3. ACTION REQUESTED: WASHINGTON REVIEW, COMMENT AND CLEARANCE TO TABLE APPROVED TEXT AS U.S. LABOR ARTICLE. SULLIVAN

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